



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Homer Garrison, Jr.,
Director, Department of Public Safety
Austin, Texas

Dear Mr. Garrison:

Opinion No. O-2295
Re: S. B. No. 427 Departmental Appropriation
46th Legislature --
Department of Public
Safety -- Payment of
doctor's fees in case
of injury to patrol-
man injured in line
of duty.

You ask whether or not it would be permissible for the Department of Public Safety to pay the doctor's bill and hospital bill for patrolman Barton under the facts set forth.

The facts are as follows:

"On April 1, 1940, Texas Highway Patrolman A. B. Barton was conducting tests for operators and chauffeurs license applicants, which duty required that he get into the motor vehicle with the applicant to observe the manner in which such applicant operated the motor vehicle.

"At approximately 3:30 P. M., on this date, he stepped from a truck which was being used by the applicant, and a pain struck him in the side and back. He was immediately taken to the hospital and after a diagnosis, an appendectomy was performed. After the

operation the attending physician stated that apparently his appendix had been ruptured during childhood and had adhered to his intestines; consequently, in stepping from the truck, the adhesions around the base of the appendix were broken or torn. The attending physician further stated that in his opinion he was reasonably sure that Patrolman Barton would not have had this trouble under ordinary circumstances, but that the stepping or jumping from the truck necessitated the operation."

Item 2 of the Maintenance and Miscellaneous Appropriation to the License and Weights Division of the Department of Public Safety, S. B. 427, 46th Legislature (1939) is as follows:

"Motor equipment, parts, supplies, fixtures, other equipment and supplies, printing, stationery, telegraph, telephone, rentals, teletypewriters, express, freight, postage, repairs, maintenance, hospitalization and medical services when injured in line of duty, funeral expenses when death results from injuries incurred in line of duty, surety bonds, loadometers, radios, first aid supplies and all other necessary expenses.....\$11,150.00"

The language, "injuries incurred in line of duty", is synonymous in legal contemplation with the language "injuries received in course of employment", as used in our Workmen's Compensation Act.

The accepted rule with respect to compensation cases is thus stated by Texas Jurisprudence:

"The injury must be shown to have been sustained in the 'course of employment' in order to be com-

pensable. The statutory expression 'in the course of his employment' has reference to the time, place and circumstances under which the injury occurred. An injury is said so to arise when it occurs within the period of the employment at a place where the employee reasonably may be in the performance of his duty and while he is fulfilling that duty or engaged in doing something incidental thereto. If the injury is received while the employee is doing his work it may be 'in the course of employment' and yet have no causal connection with the employment; that is, the employee is still included when he does those reasonable things which his contract expressly or impliedly permits him to do.

"If the employee, when injured, was acting within the course of his employment and the risk was reasonably incident to the conduct of the employer's business, it is immaterial that the employee was injured at the hands of persons or companies over whose servants the employer had no control, or at the hands of fellow servants who, at the time, were not acting within the scope of their employment." (45 Tex. Jur. p. 458, ¶ 71).

While the language "arising out of the employment" is not expressly a part of our Workmen's Compensation Act, nevertheless, the Supreme Court has held that the phrase "having to do with and originating in the work", which is a part of our Workmen's Compensation Act, is in effect the same as the expression "arising out of the employment." (Cassell vs. U. S. Fidelity & Guaranty Co., 283 S. W. 127).

Now, an injury arises out of the employment when it reasonably appears from all the facts and cir-

circumstances that there is a causal connection between the conditions which the employer puts about the employee and the resulting injury. (Maryland Casualty Co. vs. Smith, 40 S. W. (2) 913; Texas Indemnity Co. vs. Preslar, 298 S. W. 666, (Writ of error dismissed); 45 Tex. Jur. p. 463, Sec. 73). Our Supreme Court has said:

"An injury has to do with, and arises out of the work or business of the employer, when it results from a risk or hazard which is necessarily, or ordinarily, or reasonably inherent in, or incident to, the conduct of such work or business." -- Lumberman's Reciprocal Asso. vs. Behnken, 246 S. W. 72, 28 A. L. R. 1402.

In that case Behnken, an employee, was run over and killed by a railroad engine while going to his work. Justice Greenwood, for the Supreme Court said:

"Was Behnken engaged in or about the furtherance of the affairs or business of his employer when he received the injury causing his death? He was upon the crossing provided as the means of access to his work solely because he was an employee. He encountered the dangers incident to use of the crossing in order that he might perform the duties imposed by his contract of service. Without subjecting himself to such dangers he could not do what was required of him in the conduct of the lumber company's business. He had reached a place provided and used only as an adjunct to that business, and was injured from a risk created by the conditions under which the business was carried on. To hold that he was not acting in furtherance of the affairs

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or business of the lumber company would be to give a strict interpretation to this remedial statute, which should be liberally construed with a view to accomplish its purpose and to promote justice."

If the stepping from the truck caused the injury complained of, then, it is our opinion, that said injury comes within the meaning of the Appropriation Act for your department, and that the expenses of hospital and medical services in connection with his injuries should be paid from the appropriation.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Ocie Spear
Ocie Spear
Assistant

OS-MR

APPROVED MAY 6, 1940

Ernest B. Moran
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
Adm